

in the course of performing official duties or because of the employee's official relationship with the Department of Health and Human Services unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with the request would promote the objectives of the Department of Health and Human Services.

(b) The Office of the General Counsel will request the assistance of the Department of Justice where necessary to represent the interests of the Department of Health and Human Services and its employees under this part.

**§2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.**

(a) All requests for testimony by a Department of Health and Human Services employee in his or her official capacity and not subject to the exceptions set forth in §2.1(d), of this part, must be in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interests of the Department of Health and Human Services or the Federal Government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has not acted by the return date, the employee will appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

**§2.5 Subpoenas duces tecum.**

(a) Subpoenas duces tecum for records of the Department of Health and Human Services shall be deemed a request for records under the Freedom of Information Act and shall be han-

dled pursuant to the rules governing public disclosure established in 45 CFR Part 5.

(b) Whenever a subpoena duces tecum, in appropriate form, has been lawfully served upon a Department of Health and Human Services' employee commanding the production of any record, such employee, after consultation with the Office of the General Counsel, shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures and disclosure rules established in 45 CFR Part 5.

**§2.6 Certification and authentication of records.**

Upon request, Department of Health and Human Services' agencies will certify the authenticity of copies of records that are to be disclosed pursuant to 45 CFR Part 5 and will authenticate copies of records previously disclosed. Fees for such certification are set forth in 45 CFR 5.43(e).

[52 FR 37146, Oct. 5, 1987, as amended at 55 FR 4611, Feb. 9, 1990]

**PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE**

**Subpart A—General**

**Sec.**

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- 3.2 Applicability.
- 3.3 Compliance.
- 3.4 False reports and reports of injury or damage.
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- 3.21 Emergency vehicles.
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- 3.26 Speed limit.
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- 3.43 Removal of property.  
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### Subpart D—Penalties

#### 3.61 Penalties.

AUTHORITY: 40 U.S.C. 318–318d. 486; Delegation of Authority, 33 FR 604.

SOURCE: 55 FR 2068, Jan. 22, 1990, unless otherwise noted.

### Subpart A—General

#### § 3.1 Definitions.

*Director* means the Director or Acting Director of the National Institutes of Health (NIH), or other officer or employee of NIH to whom the authority involved has been delegated.

*Enclave* means, unless the context requires a different meaning, the area, containing about 318 acres, acquired by the United States in several parcels in the years 1935 through 1983, and any further future acquisitions, comprising the National Institutes of Health located in Montgomery County, Maryland, over which the United States acquired exclusive jurisdiction under the Act of March 31, 1953, Chapter 158 (1953 Maryland Laws 311).

*Police officer* means a uniformed or non-uniformed police officer appointed under a delegation of authority to the Director under Title 40 United States Code section 318 or 318d; any other Federal law enforcement officer; and any other person whose law enforcement services are secured by contract, or upon request or deputation from a State or local law enforcement agency.

#### § 3.2 Applicability.

(a) The regulations in this part apply to all areas in the enclave and to all persons on or within the enclave, except as otherwise provided.

(b) The regulations in this part do not apply to occupants, their visitors, and other authorized persons in areas used as living quarters:

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(1) When specifically made inapplicable, and

(2) In the case of the following provisions: § 3.24 Parking permits; § 3.25 Servicing of vehicles; § 3.42 Hobbies and sports; and § 3.42(f) Smoking.

(c) All regulations in this part are in addition to the provisions in the United States Code, including title 18 relating to crimes and criminal procedure, and title 21 relating to food and drugs, which apply:

(1) Without regard to the place of the offense, or

(2) To areas (such as the enclave) subject to the “special maritime and territorial jurisdiction of the United States,” as defined in Title 18 United States Code section 7.

(d) In accordance with the Assimilative Crimes Act (18 U.S.C. 13), whoever is found guilty of an offense which, although not made punishable by any act of Congress, nor any provision of these regulations, would be punishable if committed within the State of Maryland, shall be guilty of a like offense and subject to a like punishment. In the event of an irreconcilable conflict between a provision of this part and a Maryland statute governing the identical subject matter, this part shall control.

(e) *Federal criminal statutes which apply.* The following Federal criminal statutes in the United States Code apply to Federal enclaves and elsewhere without regard to the place of the offense. This listing is provided solely for the information of the public and is not all-inclusive. The omission of other Federal statutes does not mean that such other statutes do not apply. In any given situation, the cited statutory provisions and any amendments in effect when the alleged offense occurred shall determine the specifics of the offense, applicability, and penalty.

Subject	U.S. Code	Provides generally	Maximum penalty
1. By force or threat of force, willful injury, intimidation or interference with, or attempts to injure, intimidate or interfere with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity, provided by or administered by the U.S., and engaging in certain other Federal protected activities.	18 U.S.C. 245 .....	Prohibits .....	Not involving death or bodily injury: Imprisonment one year and/or \$1,000 fine.
2. Malicious destruction or damage, by an explosive, to a building or other property owned, possessed, used, or leased by the U.S., U.S. agency, or any organization receiving Federal financial assistance.	18 U.S.C. 844(f) .....	Prohibits .....	First offense not involving death or personal injury: Imprisonment 10 years and/or \$10,000 fine and seizure and forfeiture of explosive materials.
3. Possession of explosive in buildings owned, possessed, used, or leased by U.S. or U.S. agency.	18 U.S.C. 844(g) .....	Prohibits, except with written consent of the agency.	Imprisonment one year and/or \$1,000 fine and seizure and forfeiture of explosive materials.
4. Use of or carrying an explosive to commit, or during commission of, a felony prosecutable in a U.S. court.	18 U.S.C. 844(h) .....	Prohibits .....	First offense: Imprisonment 10 years and seizure and forfeiture of explosive materials.
5. Use of or carrying a firearm during and in relation to any crime of violence prosecutable in a U.S. court.	18 U.S.C. 924(c) .....	Prohibits .....	First offense: Imprisonment 5 years and \$5,000 fine and seizure and forfeiture of firearm and ammunition.
6. Manufacture, distribution, dispensing, or possession with intent to do these acts, of narcotics and other controlled substances and counterfeit substances.	21 U.S.C. 841, 842, 843, 845.	Prohibits, except as authorized by the Controlled Substances Act (generally 21 U.S.C. 801–904).	First offense: Imprisonment 20 years and/or \$250,000 fine depending on the amount and kind or substance (twice the above penalties for distribution by a person at least 18 years of age to one under age 21).
7. Simple possession of narcotics or other controlled substances.	21 U.S.C. 844 .....	Prohibits, unless substance obtained directly, or pursuant to prescription or order, from a practitioner, acting in the course of professional practice, or as otherwise authorized under the Controlled Substances Act.	First offense: Imprisonment 1 year and/or \$5,000 fine.

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(f) *Maryland criminal statutes that apply.* The matters described in this paragraph are governed, in whole or in part, by the current version of the cited Maryland criminal statutory provisions, which are made Federal criminal offenses under the Assimilative Crimes Act (18 U.S.C. 13). This listing sets forth areas of conduct particularly relevant to the enclave and is provided solely for the information of the public. The list is not all-inclusive and omission of other Maryland criminal

statutes does not mean that such other statutes are not assimilated as Federal offenses under the Act. Generally, other Maryland criminal statutes will apply on the enclave, by force of the Act, unless superseded by Federal Law or a given provision of this part. In any given situation, the cited statutory provisions and any amendments in effect when the alleged offense occurred shall determine the specifics of the offense, applicability, and penalty.

Subject	Maryland code annotated	Provides generally	Maximum penalty
1. Pedestrian right-of-way .....	Transportation, Sec. 21-502.	Pedestrians have the right-of-way in crosswalks and certain other areas. Subject to certain limitations.	Imprisonment 2 months and/or \$500 fine.
2. Drivers to exercise due care .....	Sec. 21-511 .....	Blind, partially blind, or hearing impaired pedestrians have the right-of-way at any crossing or intersection. Subject to certain limitations. Drivers shall exercise due care to avoid colliding with pedestrians, children and incapacitated individuals.	\$500 fine.
3. Driving while intoxicated, under the influence of alcohol and/or a drug or controlled substance.	Transportation, Sec. 21-504.	Prohibits .....	\$500 fine.
4. Unattended motor vehicles .....	Transportation, Sec. 21-902.	Prohibits .....	Sec. 21-902(a) (driving while intoxicated, first offense): Imprisonment 1 year and/or \$1,000 fine. Sec. 21-902 (b), (c), (d) (driving under the influence): Imprisonment 2 months and/or \$500 fine. \$500 fine.
5. Carrying or wearing certain concealed weapons (other than handguns) or openly with intent to injure.	Transportation, Sec. 21-1101	Prohibits leaving motor vehicles unattended unless certain precautions are taken.	Imprisonment 3 years or \$1,000 fine.
6. Unlawful wearing, carrying, or transporting a handgun, whether concealed or openly.	Article 27, Sec. 36B .....	Prohibits, except for law enforcement personnel or as a reasonable precaution against apprehended danger.	First offense and no prior related offense: Imprisonment 3 years and/or \$2,500 fine.
7. Use of handgun or concealable antique firearm in commission of felony or crime of violence.	Article 27, Sec. 36B .....	Prohibits except by law enforcement personnel or with permit.	Imprisonment 20 years.
8. Disturbance of the peace .....	Article 27, Sec. 122 .....	Prohibits acting in a disorderly manner in public places.	Imprisonment 30 days and/or \$500 fine.
9. Gambling .....	Article 27, Secs. 240, 245.	Prohibits betting, wagering and gambling, and certain games of chance (does not apply to vending or purchasing lottery tickets authorized under State law in accordance with approved procedures).	Sec. 240: Imprisonment one year and/or \$1,000 fine. Sec. 245: Imprisonment 2 years and/or \$100 fine.

### § 3.3

#### **§ 3.3 Compliance.**

A person must comply with the regulations in this part; with all official signs; and with the lawful directions or orders of a police officer or other authorized person, including traffic and parking directions.

#### **§ 3.4 False reports and reports of injury or damage.**

A person may not knowingly give any false or fictitious report concerning an accident or violation of the regulations of this part or any applicable Federal or Maryland statute to any person properly investigating an accident or alleged violation. All incidents resulting in injury to persons or willful damage to property in excess of \$100.00 (one hundred dollars) in value must be reported by the persons involved to the Police Office as soon as possible. The Police Office's main location and telephone number is: Building 31, Room B3BN10; (301) 496-5685.

#### **§ 3.5 Lost and found, and abandoned property.**

Lost articles which are found on the enclave, including money and other personal property, together with any identifying information, must be deposited at the Police Office or with an office (such as the place where found) which may likely have some knowledge of ownership. If the article is deposited with an office other than the Police Office and the owner does not claim it within 30 days, it shall be deposited at the Police Office for further disposition in accordance with General Services Administration regulations (41 CFR part 101-48). Abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, may be so identified by the Police Office and sold and the proceeds deposited in accordance with 41 CFR 101-45.304 and 101-48.305.

[57 FR 1874, Jan. 16, 1992]

#### **§ 3.6 Nondiscrimination.**

A person may not discriminate by segregation or otherwise against another person because of age, color, creed, handicap, national origin, race or sex, in furnishing or by refusing to furnish to that person the use of any

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facility of a public nature, including all services, privileges, accommodations, and activities provided within the enclave. (Title 18 United States Code section 245 prohibits, by use of force or threat of force, willful injury, intimidation, or interference with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity provided by or administered by the United States, attempts to do these acts, and engaging in certain other activities.)

## **Subpart B—Traffic Regulations**

#### **§ 3.21 Emergency vehicles.**

A person must yield the right of way to an emergency vehicle operating its siren or flashing lights.

#### **§ 3.22 Request for identification.**

Upon request by a police officer, a person involved in any of the following situations must provide identification, for example, by exhibiting satisfactory credentials (such as an employment identification card or driver's license):

(a) A traffic accident within the enclave;

(b) The police officer reasonably believes that the individual is engaged in, or has engaged in, criminal conduct or a violation of the regulations of this part; or

(c) The enclave or a portion of the enclave is not open to the public (see § 3.41).

A driver of a motor vehicle involved in an accident within the enclave shall also exhibit, upon the request of a police officer, the owner's registration card or other satisfactory proof of ownership.

#### **§ 3.23 Parking.**

(a) A person may not stand (vehicle stopped, with or without, an occupant), or park a motor vehicle or other vehicle:

(1) In a lane, space, or area not designated by a sign for parking, and/or standing;

(2) On a sidewalk;

(3) Within an intersection or crosswalk;

(4) Within 10 feet of a fire hydrant, 5 feet of a driveway, or 20 feet of a stop

sign, crosswalk, or traffic control signal;

- (5) In a double-parked position;
- (6) At a curb painted yellow;
- (7) On the side of a street facing oncoming traffic;
- (8) In a position that would obstruct traffic;

(9) For a period in excess of 24 hours, except at living quarters, or with the approval of the Police Office.

(b) A person must park bicycles, motorbikes, and similar vehicles only in designated areas, and may not bring these vehicles inside buildings.

(c) A visitor must park in an area identified for that purpose by posted signs or similar instructions, such as “visitor parking” and “reserved for visitors”.

(d) A person may not drive or park an unauthorized motor vehicle on a grassy, or any other unpaved, area without the approval of the Police Office.

#### **§ 3.24 Parking permits.**

Except for visitor parking, a person may not park a motor vehicle without displaying a parking permit, currently valid for that location. The Director may revoke or refuse to issue or renew any parking permit for violation of this section, or any provision of this part.

#### **§ 3.25 Servicing of vehicles.**

A person may not wash, polish, change oil, lubricate, or make non-emergency repairs on a privately owned vehicle.

#### **§ 3.26 Speed limit.**

The speed limit is 25 miles per hour, unless otherwise posted. A driver of a vehicle may not exceed the speed limit.

#### **§ 3.27 Bicycles.**

A person may not operate a bicycle, motorbike, or similar vehicle without a horn or other warning device, and, if the vehicle is operated between dusk and dawn, it must be equipped with an operating headlight, and taillight or reflector.

### **Subpart C—Facilities and Grounds**

#### **§ 3.41 Admission to facilities or grounds.**

The enclave is officially open to the public during normal working and visiting hours and for approved public events. The enclave is closed to the public at all other times, and the Director may also officially close all or part of the enclave, or any building, in emergency situations and at other times the Director deems necessary to ensure the orderly conduct of Government business. When all or part of the enclave is closed to the public, admission is restricted to employees and other authorized persons who may be required to display Government credentials or other identification when requested by a police officer and may be required to sign a register. The living quarters and adjacent areas are not open to the public but are open at all times to occupants and their visitors and business invitees, unless otherwise closed by the Director.

#### **§ 3.42 Restricted activities.**

(a) *Hobbies and sports.* A person may undertake hobbies and sports only in designated areas or as approved by the Director.

(b) *Pets and other animals.* A person may not bring on the enclave any cat, dog, or other animal except for authorized purposes. This prohibition does not apply to domestic pets at living quarters or to the exercise of these pets under leash or other appropriate restraints. The use of a dog by a handicapped person to assist that person is authorized.

(c) *Photography.* A person may take photographs, films or audiovisuals, for personal or news purposes on the grounds of the enclave or in entrances, lobbies, foyers, corridors, and auditoriums in use for public meetings, except when contrary to security regulations or Department of Health and Human Services policies, or where prohibited by appropriate signs. Photographs and similar activities for advertising or commercial purposes may be taken only with the advance written approval of the Director. A person may take photographs of a patient only

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with the informed consent of the patient (or the natural or legal guardian) and of the Director of the Warren Grant Magnuson Clinical Center or delegate.

(d) *Intoxicating beverages, narcotics, and other controlled substances.* A person may not possess, sell, consume, or use alcohol or other intoxicating beverages, except in connection with official duties, as part of authorized research, or as otherwise authorized by the Director, or, in the case of possession, consumption or use only, in living quarters. (The sale, consumption, use, or possession of narcotics and other controlled substances is prohibited and shall be governed by the Controlled Substances Act (21 U.S.C. 841-845); driving under the influence of an alcoholic beverage, drug or controlled substance is prohibited and shall be governed by the Maryland *Transportation Code Annotated* section 21-902.)

(e) *Nuisances and disturbances.* The following acts by a person are prohibited: Unwarranted loitering, disorderly conduct (acting in a disorderly manner to the disturbance of the public peace is prohibited and shall be governed by *Maryland Code Annotated*, Article 27, section 122); littering or disposal of rubbish in an unauthorized manner, the creation of any hazard to persons or property; the throwing of articles of any kind from or at a building; the climbing upon any part of a building for other than an authorized purpose; the loud playing of radios or other similar devices; and rollerskating, skateboarding, sledding or similar activities, except in officially designated areas.

(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke in any building on the enclave.

(g) *Firearms, explosive, and other weapons.* No person other than a specifically authorized police officer shall possess firearms, explosives, or other dangerous or deadly weapons or dangerous materials intended to be used as weapons either openly or concealed. Upon written request, the Director may permit possession in living quarters of antique firearms held for collection purposes, if the Director finds that the col-

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lection does not present any risk of harm.

[55 FR 2068, Jan. 22, 1990, as amended at 57 FR 1874, Jan. 16, 1992]

### § 3.43 Removal of property.

A person may not remove Federal property from the enclave or any building on the enclave without a property pass, signed by an authorized property custodian, which specifically describes the items to be removed. In an emergency, or when the property custodian is not available, a police officer may approve removal of Federal property if, after consulting with the administrative officer or other appropriate official, the police officer is authorized by the official to do so. Privately-owned property, other than that ordinarily carried on one's person, may be removed only under this property pass procedure, or upon properly establishing ownership of the property to a police officer.

Packages, briefcases, or other containers brought within the enclave are subject to inspection while on, or being removed from, the enclave.

### § 3.44 Solicitation.

It shall be unlawful for a person (other than an employee using authorized bulletin boards), without prior written approval of the Director, to offer or display any article or service for sale within the enclave buildings or grounds; or to display any sign, placard, or other form of advertisement; or to collect private debts; or to solicit business, alms, subscriptions or contributions, except in connection with approved national or local campaigns for funds for welfare, health and other public interest purposes, or solicitation of labor organization membership or dues as authorized under the Civil Service Reform Act of 1978 (Pub. L. 95-454).

This provision shall not apply to authorized lessees and their agents and employees with regard to space leased for commercial, cultural, educational, or recreational purposes, under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(A)(16)).



## Subpart D—Penalties

### § 3.61 Penalties.

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine of not more than \$50 or imprisonment of not more than thirty days or both, for each violation (40 U.S.C. 318c).

(b) Penalties for violation of offenses proscribed by Federal statutes (generally codified in title 18 of the United States Code) and Maryland criminal statutes which are made Federal offenses under the Assimilative Crimes Act and are prescribed in the applicable provisions of those statutes.

## PART 4—SERVICE OF PROCESS

### Sec.

- 4.1 Suits against the Department and its employees in their official capacities.
- 4.2 Other process directed to the Department or Secretary.
- 4.3 Process against Department officials in their individual capacities.
- 4.4 Acknowledgment of mailed process.
- 4.5 Effect of regulations.
- 4.6 Materials related to petitions under the National Vaccine Injury Compensation Program.

AUTHORITY: 5 U.S.C. 301, 42 U.S.C. 300aa-11.

SOURCE: 48 FR 24079, May 31, 1983, unless otherwise noted.

### § 4.1 Suits against the Department and its employees in their official capacities.

Summonses and complaints to be served by mail on the Department of Health and Human Services, the Secretary of Health and Human Services, or other employees of the Department in their official capacities should be sent to the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201.

### § 4.2 Other process directed to the Department or Secretary.

Subpoenas and other process (other than summonses and complaints) that are required to be served on the Department of Health and Human Services or the Secretary of Health and Human Services in his official capacity should be served as follows:

(a) If authorized by law to be served by mail, any mailed process should be sent to the General Counsel, Department of Health and Human Services, 200 Independence, S.W., Washington, DC 20201.

(b) If served by an individual, the process should be delivered to the staff of the correspondence control unit in the Office of the General Counsel, Room 711-E, 200 Independence Avenue, S.W., Washington, DC, or, in the absence of that staff, to any Deputy General Counsel or secretary to any Deputy General Counsel of the Department.

### § 4.3 Process against Department officials in their individual capacities.

Process to be served on Department officials in their individual capacities must be served in compliance with the requirements for service of process on individuals who are not governmental officials. The Office of the General Counsel is authorized but not required to accept process to be served on Departmental officials in their individual capacities if the suit relates to an employee's official duties.

### § 4.4 Acknowledgement of mailed process.

The Department will not provide a receipt or other acknowledgement of process received, except for a return receipt associated with certified mail and, where required, the acknowledgement specified by Rule 4(c)(2)(C) of the Federal Rules of Civil Procedure.

### § 4.5 Effect of regulations.

The regulations in this part are intended solely to identify Department officials who are authorized to accept service of process. Litigants must comply with all requirements pertaining to service of process that are established by statute and court rule even though they are not repeated in these regulations.

### § 4.6 Materials related to petitions under the National Vaccine Injury Compensation Program.

Notwithstanding the provisions of §§ 4.1, 4.2, and 4.3, service of the Secretary's copies of petitions for compensation under the National Vaccine